

2005 – 2006 Status Report to the Washington State Legislature:

Holocaust Survivors Assistance Office
Office of the Insurance Commissioner



www.insurance.wa.gov

Mike Kreidler - *State Insurance Commissioner*

Table of Contents

Executive summary	I
Status of Washington claims	2
Status of all ICHEIC claims	2
Background	3
Legal challenge: June 2003 Supreme Court decision	4
Claims status breakdown (chart)	5
Washington case studies updates	6 - 10
Conclusion	10

The following is an update of Washington Insurance Commissioner Mike Kreidler's June 2002 and October 2004 reports on the work and accomplishments of the Holocaust Survivors Assistance Office and the status of Holocaust-era insurance claims.

Executive Summary

Since 1997, the Office of the Insurance Commissioner (OIC) has been dedicated to resolving outstanding Holocaust-era insurance claims on behalf of Washington survivors, their families and heirs. Despite the obstacles and difficulties encountered in researching and processing historical claims which date back to World War II, the Holocaust Survivors Assistance Office continues to generate successful outcomes for Washington survivors and their heirs.

In 1999, the Washington State Legislature unanimously passed the Holocaust Victims Insurance Relief Act (Chapter 48.104 RCW).

Provisions of the law included:

- Establishment of a Holocaust Survivor Assistance Office to help Holocaust survivors and the families and heirs of Holocaust victims living in Washington state recover proceeds from insurance policies and other stolen assets that were improperly denied or processed.
- Creation of a Holocaust Insurance Company Registry containing records of insurance companies doing business in Washington State and their corporate parents as well as other pertinent information about victims of the Holocaust. The registry is used to determine if any of the companies were involved in issuing or denying Holocaust-era coverage and to assist heirs in pursuing potential claims.
- Extension of the statute of limitations for insurance policies issued to Holocaust survivors and victims until December 31, 2010, thereby enabling Holocaust survivors or victims' families to sue insurance companies for failure to address those claims.

Washington's law provided a "safe harbor" for companies participating in good faith and working through the International Commission on Holocaust Era Insurance Claims (ICHEIC), to "resolve all outstanding claims with offers of fair settlements in a reasonable time frame." Failure of ICHEIC to resolve these issues could trigger suspended provisions of the Washington law up to and including fining companies and/or suspending their certificates of authority (licenses).

Each month, the Holocaust Survivors Assistance Office receives and reviews reports on the status and progress of claims that were submitted to ICHEIC. Review of these reports ensures that none of Washington's claims are held up by a failure to submit a required document. In addition, attempts are made to follow-up with the relevant company directly to determine why a particular claim was denied, or to clarify any discrepancies in the handling of a Washington claim.

Status of Washington claims

According to the latest available monthly report dated February 24, 2006:

- 860 claims from Washington State were filed with ICHEIC ¹.
- 61 of Washington's claims have received offers.
- 489 have been denied.
- 25 denials are under appeal.
- 104 Washington claims still remain to be processed.
- More than 60% of Washington's 200 claimants have received some kind of payment related to their Holocaust-era insurance claims.
- 40 have received offers of payment totaling \$771,566.
- 93 claimants have received \$1,000 humanitarian fund payments.
- The grand total paid to Washington claimants is \$864,566.

As of OIC's last report in October 2004:

- 100 claims were filed with ICHEIC, resulting in 38 additional offers to 24 claimants totaling \$511,520.
- 18 of these offers are pending.
- 41 humanitarian fund awards of \$1,000 were made for a grand total of \$552,520 paid to WA claimants.
- 300 claims were denied.
- 22 claims were listed as "Finalized - invalid claim" for various reasons.

Status of all ICHEIC claims

As of February 3, 2006:

- ICHEIC received a total of 91,241 claims "eligible under the ICHEIC claims process," ² of which 33,776 (37%) include the name of the insurance company.
- 9,646 offers (10.6%) have been made for a total of \$138.07 million.
- The average offer is \$14,314.
- An additional 784 offers totaling \$15.13 million have been made "by companies

1 An additional 191 claims were filed directly with ICHEIC, and an additional four through the New York Holocaust Claim Processing Office which, because of "privacy concerns" have not been shared with OIC. The breakdown on the chart on page 5 is based on all claims submitted to ICHEIC through Washington's Holocaust Survivors Assistance Office.

2 ICHEIC "Statistical report 060203;" available at www.icheic.org.

for claims not submitted through ICHEIC but using ICHEIC Valuation Guidelines,” increasing the total paid to \$153.20 million on 10,430 claims.

- The average offer is \$14,688.
- 26,683 claimants have qualified for and received humanitarian payments of \$1,000 per claimant for grand total of \$179.88 million.
- 17,171 (41.5%) named claims (claims which listed the name of the company ³) and 3,756 (6.5%) of the claims which did not name a company are still pending.
- As of February 3, 2006, 20,927 claims (22.9%) still have not been processed.
- At the current rate, all claims will not be completed until 2012.

Background

In 1997, several class action lawsuits in American courts were filed against major European insurance companies for refusing to honor unpaid Holocaust-era insurance policies. Newspaper accounts of these lawsuits brought the issue of Holocaust-era insurance to the attention of U.S. insurance regulators. The National Association of Insurance Commissioners (NAIC) held hearings in several cities around the U.S. aimed at gathering testimony about the experiences of Holocaust survivors and the families of Holocaust victims in their efforts to file claims on unpaid pre-World War II insurance policies. U.S. regulators also heard testimony from the relevant insurance companies. In their defense, the insurers cited among other difficulties, the lack of death certificates and policy information by claimants, their own lack of records, and the nationalization of the insurance industry by communist governments in Eastern Europe following World War II.

The lawsuits, the attention the issue was receiving from U.S. insurance commissioners, and the threat of increased regulatory action led six major European insurance companies to agree in 1998 to join an international process to address and resolve these outstanding issues.

As a result, the International Commission on Holocaust Era Insurance Claims (ICHEIC) was established by the NAIC, the six European insurance companies, ⁴ several Jewish organizations and the government of Israel to create “a just process that will expeditiously address the issue of unpaid insurance policies issued to victims of the Holocaust.”

3 The 17,171 outstanding named claims are broken down as follows: 8,947 company and German claims, 3,134 claims with other organizations, and 5,090 8A2 humanitarian claims. 8A2 humanitarian claims are “claims on companies that were liquidated or nationalized after World War II and for which no present-day successor company can be identified. Awards in this humanitarian claims process are calculated on a per policy basis in accordance with the ICHEIC Valuation Guidelines;” notes to ICHEIC Statistical report 060203.

4 The six original companies were Allianz, AXA, Basler Lebens, Generali, Winterthur and Zurich. After several months, Basler Lebens left ICHEIC, and in May 2000, the member companies of the Dutch Insurance Association joined the commission.

According to its Chairman, former U.S. Secretary of State Lawrence Eagleburger, “We are guided by the principle that we want to be able to say that we have done everything possible to reach all potential claimants and pay Holocaust-related insurance claims in a fair and expeditious manner.”

In February 2000, ICHEIC launched what it described as a world-wide effort to resolve outstanding claims on insurance policies held by victims of the Holocaust.

Legal Challenge: June 2003 Supreme Court Decision

In 1998, California enacted a law requiring the California Department of Insurance to develop a comprehensive program to resolve the insurance claims of Holocaust victims, survivors and their heirs (Section 354.5, California Code of Civil Procedure). The new law gave California courts jurisdiction over claims by California claimants and extended the statute of limitations for filing a claim until December 31, 2010.

That same year, a second law (Section 790.15 of the California Insurance Code) was passed requiring the Commissioner of Insurance to “suspend the license of any insurer if it or one of its affiliates fails to pay ‘any valid claim’ on a policy issued to a person who was a victim of persecution of Jewish and other people preceding and during World War II by Germany, its allies, or sympathizers.”

In October 1999, the Holocaust Victim Insurance Relief Act (“HVIRA,” California Insurance Code §§13800 -13807) was passed, requiring the Insurance Commissioner to establish and maintain a registry regarding insurance policies issued in Europe to victims of the Holocaust during the Nazi period.

However, in April 2000, just prior to the registry provision taking effect, HVIRA was challenged in federal court by several affected companies and the American Insurance Association which asserted that insurance commissioners did not have the authority to require them to provide information about company business practices outside of the state that he or she regulates.

On June 21, 2003, the U.S. Supreme Court ruled in a 5-4 decision in *American Insurance Association v. Garamendi* that California’s HVIRA “interfered with the President’s conduct of the nation’s foreign policy and was therefore preempted.”

Status of Washington State claims submitted to ICHEIC (as of 01/31/2006)

Total claims (860)	
Claims naming a company	342
Claims naming an MOU (original participating) company	152
Claims naming a non-MOU company	190
Claims not naming a company	518
Total offers	62
Total declines	492
Present status of MOU company claims (152)	
Offers by MOU companies	35
Declined by MOU companies	72
Claim sent to MOU awaiting response	3
Other	42
Present status of non-MOU named claims (190)	
Offers by non-MOU	27
Declined by non-MOU company	41
"Claim sent to MOU awaiting response"	78
"Sent to non-MOU co. awaiting response"	22
Other (claim form incomplete, etc.)	19
"Referred to ICHEIC"	3
Sent to MOU awaiting response	99
Other (390)	
Unnamed company - declined	379
Non-life claims on unnamed company	11
Finalized - invalid claims (117)	
"Invalid – does not meet ICHEIC..."	5
Policies from the FSU (former Soviet Union) - unknown insurance	10
Policy issued outside ICHEIC sphere (i.e., geography covered by ICHEIC)	2
Previously compensated	3
Replica claims	97

Source: International Commission on Holocaust Era Insurance Claims (ICHEIC)

Washington Case Study Updates:

The following are updates on cases and issues referenced in previous reports generated by Washington's Holocaust Survivors Assistance Office.

Case Study 1: For several decades following the end of World War II, E.L. pursued claims for life insurance policies purchased in her native Germany by her parents and in-laws, who were killed during the Holocaust, only to be told by the company involved - Allianz Lebensversicherungs AG - that no records of her family's insurance existed. In the fall of 2000, after the establishment of ICHEIC, E.L. filed claims for 10 members of her family. On April 13, 2003, Allianz sent a letter to E.L. informing her that the company had finally located records about her family's insurance and offered payment totaling about \$12,000 for three policies taken out by her mother, father, and father-in-law.

E. L. passed away on March 2, 2003.

UPDATE: E.L.'s family has now received offers from two companies totaling \$17,052, but is still awaiting final payment.

Case Study 2: H.A. filed a claim with ICHEIC in March of 2000, one of the earliest claims filed from Washington State. H.A.'s claim was filed on behalf of her father, who was deported in February of 1943. As part of her claim, H.A. submitted a letter from a cousin dated June 13, 1946 informing her that her father "had taken out life insurance valued at 12,000 DM." While the letter did not indicate which insurance company the policy was with, in her claim H.A. specified Agrippina, a subsidiary of Zurich Financial Services of Switzerland. However, Zurich determined that the policy was not theirs. Despite the fact that there was strong evidence a policy existed, under ICHEIC's previous rules, since revised, H.A.'s claim would not have qualified even for a humanitarian payment. At the same time, unnamed claims with significantly less information suggesting the existence of an insurance policy have qualified for humanitarian payments.

According to ICHEIC's former rules, "the ICHEIC humanitarian claims process was designed in recognition of the fact that some claims cannot be determined with sufficient definitiveness due to the ravages of war and the passage of time. At this point in time, claims where the claimant knows the name of the insurer and which are processed as named company claims are not eligible under the humanitarian claims process."

As was pointed out in our earlier report, some claimants like H.A might have been better off not naming a company. Had they not named a company their claims would've been reviewed by all companies selling insurance where they and their families lived. Under ICHEIC's old rules, naming the wrong company that sold their family insurance more than 60 years ago would have cost them the possibility of receiving even the \$1,000 humanitarian payment. More importantly, ICHEIC rules still prevent their claims from being researched further by other companies leading to a possible match and offer.

UPDATE: OIC pressed ICHEIC to change its policy to allow claims naming the wrong company to at least be considered for humanitarian payments, and H.A. received a humanitarian payment before her death in March 2004. But because her claim had been filed much earlier in the process and had been denied and appealed prior to ICHEIC's December 2003 filing deadline, we were able to have her claim re-submitted before the deadline. In December, 2005 H.A.'s heirs received an offer of payment for \$24,808 from a different company.

Case Study 3: Between March, 2001 and July, 2004 the claims of E.L. and several other claimants were on hold with the designation "MOU Ownership Confirmed," (a reference to the original five ICHEIC companies) which would seem to suggest it was simply a matter of having the company which had acknowledged ownership of the policies in question determine what happened to those policies. In April 2004, three years later, ICHEIC asked the OIC to obtain additional information from E.L. about the date of birth of one of her relatives. E.L. passed away in March, 2003. Efforts to obtain the requested information from other family members failed, but as one observer pointed out, "If the policy information seems to match the name and other information such as the city, relatives, occupation, etc., so what if there is no birth date? [ICHEIC has] lots of matches that are clearly the same person even though they do not have a date of birth."

The family of E.L. received an offer on this claim in July, 2004.

UPDATE: The family has now received offers from Allianz, totaling \$39,726.

While there has been considerable improvement of late, getting specific answers from ICHEIC can still often take an inordinately long time. Like E.L., older claimants simply do not have the time to wait for answers. As pointed out in our 2002 report, in her case, the delay may have been unnecessary.

Case Study 4: In March, 2004, H.E. of Washington State received a humanitarian payment for a claim filed on behalf of her father. Her sister R.W., who resides in New Jersey, had also filed a claim for their father, but was denied a humanitarian payment. OIC asked whether anything could be done about this. ICHEIC replied that:

"While ICHEIC appreciates the details of this case, R.W.'s claim was reviewed in the humanitarian claims process and...was determined ineligible for a humanitarian award. As you know, the humanitarian claims process is built on a per-claimant model and each claimant's claim's are evaluated using established criteria...Given this, ICHEIC is unable to provide R.W. a humanitarian award."⁵

When asked why claims for the same relative/policy by two sisters were not sibling claims, ICHEIC responded:

R.W. and her sister filed separate claims. If by "sibling claim" you are referring to cases that...Chairman [Eagleburger] has asked that regulators help flag, again, these regulator lists were requested for cases where claimants (siblings/

⁵ Email from Anne Marie Burnsed (ICHEIC) to Marvin Stern (OIC), Sept. 1, 2004.

relatives) filed together (rather than filing separate forms) at the request of U.S. insurance regulators.⁶

ICHEIC acknowledged that if R.W. had withdrawn her claim and deferred to her sister's claim, she would have qualified for the humanitarian payment. The OIC maintained that the language used by a claimant in filling out a claim form should not be determinative of the merits of the claim. As another state regulator observed:

The 8A process is for claimants with the least amount of hard evidence. Any doubt in the 8A criteria should be resolved in favor of the claimant.

Had [R.W.] listed her sister on [her] claim form as an additional heir of the policyholder, the sister would have received an 8A award under the sibling procedure that is currently underway.

Usually the second sibling would be listed as a duplicate claim and treated exactly the same as the primary claimant. If both sisters filed on their common father, these should be duplicate claims.

It is unfair to deny the sister because she may have used slightly different language than R.W. used to describe the likelihood that their father was insured.

It is bad enough that in comparing unrelated claimants, very slight variations of language that basically have the same meaning, result in grants and denials.... this result is absolutely unfair and should be changed.⁷

UPDATE: ICHEIC agreed to look into the matter again and as a result both sisters received humanitarian payments.

The issue of "supplemental claims" has recently re-emerged. In August, 2005 a second batch of humanitarian payments was announced, and U.S. regulators were asked to assist ICHEIC in confirming the names and addresses, etc. of siblings or other family members whose names had been listed on the claimant's original claim form. In December 2005, however, ICHEIC changed its long-standing policy of paying the claims of these secondary awardees. According to ICHEIC, 8A1 payments are awarded "on a per claimant basis...ICHEIC does not issue additional payments to other heirs listed on the claim form, but encourages that the awards be shared." ICHEIC acknowledged it had created a "narrow exemption for cases where 'claimants at the specific instruction of an insurance commissioner's office, filed together on a single form'...Other than those specifically instructed to do so by regulators, claimants who included more than one name on the claim form are encouraged to share the award they received with the other members they listed."⁸

ICHEIC went on to assert that it "has evidence of efforts by some regulators to obtain payments for secondary claimants in cases where the ICHEIC claimant was not originally assisted by a state regulator office. Due to this misconduct, future

6 Email from Anne Marie Burnsed (ICHEIC) to Marvin Stern (OIC), Sept. 1, 2004.

7 Email from Leslie Tick (California Department of Insurance) to Marvin Stern (OIC), Anne Burnsed (ICHEIC) and Anaise Haase (ICHEIC), Sept. 1, 2004.

8 Eagleburger memorandum to US Insurance Regulators dated Dec. 19, 2005.

secondary claimant payments will be made only where regulators are able to demonstrate, with documentation for each claim, that they recommended claimants file together on a single form.”⁹

In response, Commissioner Kreidler wrote in a January 24, 2006 letter to ICHEIC Chairman Eagleburger that ICHEIC “should not make a distinction between claimants who have filed jointly and those who have filed separately. Each claimant entitled to receive a humanitarian award should receive it without regard to the manner in which it was submitted...Reversal of this long-standing policy only challenges the integrity of the process that you have worked so hard over the years to safeguard...I ask that you reconsider your position on this matter.”¹⁰ The OIC’s position is that since the names on the approved list were generated by ICHEIC, not the OIC, and because of expectations raised by the OIC reaching out to claimants on behalf of ICHEIC to confirm addresses, etc., all payments previously committed to by ICHEIC should be honored.

Earlier, Commissioner Garamendi of California had also written to ICHEIC about this same matter.

Case Study 5: For several years, the disposition of Austrian Holocaust insurance claims was held up by two lawsuits in U.S. courts against the Austrian government. Recently, however, the two lawsuits were dismissed.

On September 27, 2004, a Washington State claimant shared a letter from ICHEIC dated September 7, 2004 regarding “recent developments” relating to his claims against Austrian companies with the OIC. According to the ICHEIC letter:

As noted above, Austrian claims will be handled according to, “ICHEIC claims handling procedures, including those pertaining to valuation, standards of proof and relevant decisions by the Chairman,” and that “once a valid claim is established the Claims Committee’s decision will be based on the value that the policy would have had if the Holocaust had not occurred and it will be increased to a current value in today’s terms following the valuation criteria established by ICHEIC.”¹¹

On the other hand, meritorious claims will not be paid immediately, “because, in the nature of the settlement, all claims have to be assessed against the total available before payment can be made” meaning, presumably, that because the fund for paying insurance is capped at \$25 million, claims may in fact not receive their full current value.¹²

At the time, the OIC had asked ICHEIC to clarify this apparent contradiction. OIC’s concern remains that the \$25 million the Austrian government set aside to pay all claims related to Holocaust-era insurance may not be sufficient to pay all claims in full despite agreement that all claims will be processed under ICHEIC valuation guidelines, etc. These claims would instead be paid on a pro rata basis.

9 Ibid

10 Letter from Insurance Commissioner Kreidler to ICHEIC Chairman Eagleburger, Jan. 24, 2006.

11 ICHEIC letter to Washington claimant, L.S., Sept. 7, 2004.

12 Ibid

UPDATE: OIC believes that ICHEIC clearly, logically and correctly committed itself to insuring full payment of these claims; the use of the phrase “increased to a current value in today’s terms following the valuation criteria established by ICHEIC” in ICHEIC’s September 7, 2004 letter makes no sense if the payments are not raised to their “full current value.” During an ICHEIC meeting on December 14, 2005, the subject of “topping-off” – if necessary – these pro-rata Austrian claims was favorably discussed (though not decided on). However, support for that solution has apparently since lessened because of the realization it may require a significant pay-out by ICHEIC from remaining humanitarian funds.

The OIC believes two “tiers” of payment – some claimants receiving full value, some not – would be unfair, especially without a more compelling reason, and has again raised the matter with ICHEIC, the other U.S. regulator, and the Jewish organizations in ICHEIC.

ICHEIC has stated that, according to its attorneys, ICHEIC has no legal obligation to top off these payments.¹³

Conclusion

The Washington’s Holocaust Survivors Assistance Office continues to operate with the belief that every claim filed with ICHEIC is important regardless of the outcome. The process of simply remembering and honoring the memory of the victims of the Holocaust and their families has deep significance. As stated by the director of the program, Marvin Stern in the 2004 OIC report:

There is a long Jewish tradition of “remembering” – both the good and the bad...It is what the effort to reclaim the lost assets of the Jewish people is really all about – not the monetary value alone (although the survivors and the heirs of those who perished have every right to have those assets returned to them) – but also the value of the stolen memories contained in those possessions.

The real Holocaust is a mosaic of the experiences and stories of all those who were caught up in those events – a mosaic and a story that will always have six million pieces missing. But there is great value in each and every one of those pieces, in both the stories known to us and those that are only memories.

* * *

Final Note: As of March 1, 2006 the responsibilities of the Holocaust Survivors Assistance Office have been transferred to the Consumer Advocacy Division of OIC for completion of the final phase of the Holocaust insurance project.

¹³ NAIC International Holocaust Commission Taskforce conference call, Feb. 1, 2006.

